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REMARKS

Claims 1-24 and 26-32 are pending in the current application. In the Office Action mailed March 3, 2004, the Examiner objected to the drawings under 37 CFR §1.83(a). The Examiner further objected to claims 2-6, 10-15, 22-24, and 26-30 because of certain informalities. Claims 4, 11-15, 23, 24, and 26-30 were objected to for being dependent on an objected to base claim. Next, the Examiner rejected claims 1 and 22 under 35 U.S.C. §102(b) as being anticipated by the publication titled "OMEGAMARKER® Temperature Test Kit" (hereinafter OMEGAMARKER®). Claims 1, 3-4, 7-9, 16-24, 26, and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over OMEGAMARKER® in view of Lundberg, Sr. et al. (USP 2,785,654). Applicant appreciates the allowance of claim 32 and the indication of the allowability of claims 2, 5, 6, 10-15, and 27-30.

The Examiner objected to the drawings under 37 CFR §1.83(a) stating that "the drawings must show every feature of the invention specified in the claims." Applicant believes that each and every element recited in the claims is indeed shown in the figures. Specifically, claims 5 and 29 call for a dual temperature indicator stick assembly having at least one collet. Figs. 1, 2, 6, and 7 show a dual temperature indicator stick assembly having two collets. The dual temperature indicator stick assembly shown in these figures necessarily includes at least one collet. As such, that which is called for in claims 5 and 29 is shown in the figures. The Examiner further objected to the drawings for failing to show "the assembly having one resistance mechanism, as claimed in claim 3; only one of the sticks having a ridge, as claimed in claims 6 and 30; and the housing having one annular ring/lip, as claimed in claims 10 and 28...." Each of these limitations is shown in any of Figs. 2, 3, 6, or 7. Even so, the claims do not recite only one of the referenced structures. The claims in question call for at least one of such limitations and, as the Examiner acknowledges, the drawings show two such structures. Therefore, the drawings clearly show at least one of the referenced structures because having two structures necessarily includes having "at least one" structure. Therefore, as that which is called for in the claims is clearly shown in the drawings, Applicant requests withdrawal

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of the objection to the drawings. If the Examiner remains confused, the Examiner is requested to discuss this objection with a Supervisory Primary Examiner.

The Examiner next objected to claims 2-6, 10-15, 22-24, and 26-30 as lacking antecedent basis for the recitation in the claims of at least one of certain elements.

The best mode requirement is a separate and distinct requirement from the enablement requirement as outlined in 35 U.S.C. §112. Applicant has disclosed a best mode, as discussed in the specification, and has enabled the claims as written based thereon. Specifically, the claims define that which Applicant regards as the invention. MPEP §2172(II) states that "the content of Applicant's specification is not used as evidence that the scope of the claims is inconsistent with the subject matter which Applicant's regard as their invention." The Examiner's objection to the claims as lacking antecedent basis is clearly misfounded. The Examiner seems to be applying 35 U.S.C. §112, second paragraph, in comparing the claims to the specification. Such is clearly inappropriate. An antecedent basis rejection is properly determined within the scope of the claims.

Regarding the Examiner's objection to claim 22 requesting that "independent" be changed to "independently," Applicant disagrees. The first stick can operate independent of the second, or independently. As such, claim 22 satisfies 35 U.S.C. and 37 C.F.R.

The Examiner rejected claims 1 and 22 under 35 U.S.C. §102(b) as being anticipated by OMEGAMARKER® temperature test kit, hereinafter referred to as OMEGAMARKER®. In setting forth the rejection, the Examiner has merely reproduced claim 1 and stated that the reference discloses that which is called for therein without any substantive analysis. Applicant finds it peculiar that the previous Examiner did not reach such a conclusion during preparation of four (4) previous Office Actions. Nonetheless, claim 1 calls for, in part, a dual-temperature indicator stick assembly having a first indicator stick and a second indicator stick and a connector physically connecting the first and second indicator stick in a single assembly such that the first and second indicator sticks are independently operable thereto.

To anticipate a claim, the reference must teach each and every element of the claim. See: MPEP §2131. There are clear patentable distinctions between the current

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invention and the OMEGAMARKER® reference cited by the Examiner. In fact, the Examiner admitted that OMEGAMARKER® does not form a dual temperature indicator stick assembly in the §103 rejections. OMEGAMARKER® is a temperature test kit that includes a plurality of individual temperature indicating sticks. As the reference discloses, "the standard kit includes ten individual temperature-sensitive crayons plus a holder for each crayon all in a self-contained case." Emphasis added. That is, the reference itself discloses individual temperature-sensitive crayons disposed in a case -- not a dual temperature indicator stick assembly. One of ordinary skill in the art will readily recognize that a plurality of individual temperature-sensitive crayons positioned in a case is not the same as, or equivalent to, a dual temperature indicator stick assembly as presently claimed.

The Examiner's application of the reference to the claims of the present application is tenuous at best and is not drawn from the reference itself. It is apparent that the self-contained case of OMEGAMARKER® is intended as a storage device. It is equally apparent that the crayons, when located therein, cannot be used to indicate any temperature. That is, the crayons must be removed from the self-contained case to indicate a temperature. No one reasonably skilled in the art would interpret a case having individual crayons therein to be a dual temperature indicator stick assembly as claimed.

Further, the Examiner is to interpret the claims in light of the Specification. As stated in the background of the present application, "Operators desiring to detect several temperatures must carry or locate multiple temperature indicators, which is often tedious." The background further states that "It is difficult for an operator to hold a welding gun in one hand, for example, and two temperature indicator sticks in the other hand while wearing heat-resistant gloves." This prior art description describes the very problem associated with OMEGAMARKER® reference, even in light of the Examiner's strained interpretation.

Any person of even less than ordinary skill in the art would not reasonably conclude that the "case" of OMEGAMARKER® is equivalent to a "connector" as presently claimed. One skilled in the art will readily appreciate that the "case" of OMEGAMARKER® is comparable to "a container or receptacle" as defined in the

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American Heritage Dictionary, 2nd College Edition, p. 244 (copy attached), but is not a connector of a dual temperature indicator stick assembly. Notwithstanding the ordinary definition of "case," the Examiner has, contrary to its plain meaning, stretched the meaning of "case" to be a "connector." However, "extrinsic evidence may be used to explain but not expand the meaning of terms and phrases used in the reference relied upon as anticipatory of the claimed subject matter." (Emphasis added) MPEP §2131.01(II), citing *In re Baxter Travenol Labs.*, 952 F.2d 388 (Fed. Cir. 1991). Accordingly, given the clear language of the OMEGAMARKER® reference, which explicitly identifies the structure as a "self-contained case," it is improper for the Examiner to rely upon some fictitious interpretation that expands upon the plain meaning generally afforded to the term "case." The OMEGAMARKER® reference defines the structure as a "case" and therefore any interpretation given by the Examiner must be (1) consistent with, and (2) no broader than, its generally considered meaning. The Examiner has ignored both to derive a meaning beyond anything a skilled artisan would achieve.

In short, the present invention is an improvement over that which is shown in OMEGAMARKER®. Nowhere in OMEGAMARKER® is it disclosed to connect two of the individual temperature-sensitive crayons into a single assembly capable of indicating a first temperature and a second temperature. As stated in the Background of the present invention, "many applications require two different temperature indicator sticks for testing different temperatures in a single operation. It is difficult for an operator to hold a welding gun in one hand, for example, and two temperature indicator sticks in the other hand while wearing heat-resistant gloves." See: Application, paragraph [0006]. The Examiner has applied the teaching of the present application to the OMEGAMARKER® reference in a strained effort to reject the present claims. A self-contained case cannot possibly be interpreted as a one-piece connector. A "connector" is not a "case" under any definition or within common usage.

Additionally, as stated in MPEP §2111.02, "[a] claim preamble has the import that the claim as a whole suggests for it" (Citation omitted) and that "[i]f the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or,

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if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." OMEGAMARKER® discloses a plurality of individual temperature-sensitive crayons disposed in a self-contained case. However, "the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach." MPEP§2111, citing *In re Cartright*, 165 F3d 1353 (Fed. Cir. 1999). Accordingly, a person of ordinary skill in the art would not interpret the claimed connector physically connecting the first and second indicator sticks in a single assembly capable of indicating at least two temperatures as a self-contained storage case. Further, as shown in the OMEGAMARKER® image, the indicator sticks removably contained within the case are certainly not positioned for use in such a position. As such, OMEGAMARKER® does not provide "a dual temperature indicator stick assembly," as called for in claim 1. OMEGAMARKER® merely provides a plurality of individual temperature indicator sticks, each positioned in a case.

While Applicant acknowledges that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art and that drawings and pictures can anticipate claims if they clearly show the structure which is claimed, the picture must show all the claimed structural features and how they are put together. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. *See* MPEP §§2123 and 2125. It is not reasonable to change the self-evident self-contained case of the OMEGAMARKER® reference into a dual temperature indicator stick assembly, as stated in claim 1, nor would a person of ordinary skill in the art interpret it as such. It is a case to store temperature indicator sticks -- not a connector forming a part of a dual temperature indicator stick assembly as called for in claim 1. The drawings show a case holding individual markers, nothing more.

A person of ordinary skill in the art would also readily recognize that the container case of OMEGAMARKER® is not an indicator stick assembly capable of indicating at least two temperatures. The Examiner's conclusion that such is shown therein is way beyond a reasonable interpretation of the figure. As an example, in order for this interpretation to be workable, the markers must remain in the case to be useable

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as a "connector" or therefore, one would need to insert hot metal into the case to indicate a temperature. A person of ordinary skill in the art would readily appreciate, from looking at the container case of OMEGAMARKER®, that inserting hot metal into the case would severely damage, if not destroy, the case itself. More reasonably, in order for the individual indicators to indicate any temperature, they must be removed from the self-contained case. Once removed from the case, the Examiner's interpretation collapses because there would be no connector providing independent operability with respect to the connectors (see claim 1). The individual crayons of OMEGAMARKER can only indicate a single temperature each and it shows no connector providing independent operation. The Examiner has not only removed OMEGAMARKER® from its context and purpose to construct an unsupported rejection, the Examiner is interpreting the claims beyond that which is reasonable.

For all of the reasons stated above, Applicant believes claim 1 is clearly patentably distinct over OMEGAMARKER®.

In rejecting claim 22 under 35 U.S.C §102(b), the Examiner merely stated that in providing the assembly disclosed by OMEGAMARKER®, the method steps of claim 22 will inherently follow. Similar to claim 1, claim 22 calls for a method to provide a dual temperature indicator stick assembly. As argued above, the interpretation of OMEGAMARKER® to form a dual temperature indicator stick assembly is simply not reasonable. In order for the "assembly" of OMEGAMARKER® to provide a dual temperature indicator stick assembly would require inserting hot metal into the self-contained case. Such an application would clearly destroy the case. As such, at least for the reasons set forth above, claim 22 is patentably distinct over OMEGAMARKER®.

The Examiner next rejected claims 1, 3, 4, 7-9, 16-24, 26, and 31 under 35 U.S.C. §103(a) as being unpatentable over OMEGAMARKER® in view of Lundberg, Sr. et al. While Applicant does not believe the rejection is sustainable as outlined by the Examiner, Applicant has amended claim 1 to further define the invention to call for, in part, a pair of extension mechanisms extending from the connector and constructed to independently advance each of the indicator sticks upon rotation of the respective extension mechanism. The art of record does not teach or suggest such an extension mechanism. That is,

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Lundberg, Sr. et al. teaches a spring 26 and a plurality of flexible and resilient fingers 22 for gripping the chalk or crayon positioned therein. The chalk or crayon positioned therein is extended from the body of the holder only by manual manipulation of the chalk or crayon by a user. As such, claim 1, and those claims that depend therefrom, are patentably distinct over the art of record.

Claim 16 has been amended to further define the present invention. As amended, claim 16 calls for, in part, means for advancing the first indicating means and a means for advancing the second indicating means and wherein rotation of a respective advancing means extends a corresponding indicating means from the retaining means. As stated with respect to claim 1, there is no disclosure in the art of record for an advancing means to extend a respective indicating means from the retaining means. As such, claim 16, and those claims that depend therefrom, are patentably distinct over the art of record.

Claim 22 has been amended to further define the present invention. As amended, claim 22 calls for, in part, forming a first and a second extension mechanism connected to the single assembly and constructed to extend the first and the second indicator sticks from the assembly upon rotation of each respective extension mechanism. As previously stated, there is no disclosure in the art of record for forming a first and second extension mechanism. Simply, both OMEGAMARKER® and Lundberg, Sr. et al. require direct operator manipulation of the chalk or crayon in order to extend the chalk or crayon from the assemblies disclosed therein. As such, for at least those reasons set forth above, claim 22, and those claims that depend therefrom, are patentably distinct over the art of record.

Claim 31 has been amended to further define the present invention. As amended, claim 31 calls for an extension member connected to each marking end of the connector wherein rotation of the extension member extends or retracts a respective indicator stick housed therein. Neither OMEGAMARKER® or Lundberg, Sr. et al., alone or in combination, disclose an extension member constructed to extend and retract a respective indicator stick upon rotation relative thereto. As such, that which is called for in claim 31 is patentably distinct over the art of record.

As such, Applicant believes that the claims of the present invention, as presented herein, define the present invention over the art of record. Therefore, in light of the

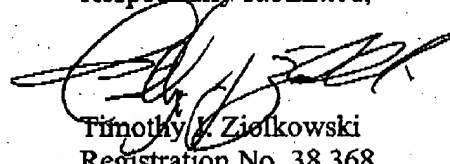
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foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-24 and 26-32.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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